



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,831	09/08/2003	Daniel Scheer Viapiana	14421.1US01	2857

23552 7590 03/22/2005

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

BASICHAS, ALFRED

ART UNIT PAPER NUMBER

3749

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/658,831	Applicant(s) SCHEER VIAPIANA, DANIEL	
	Examiner Alfred Basichas	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Brazilian reference 8100906U, which shows all of the claimed limitations. The reference shows a barbecue unit including, among other things, a base 02, a cover 02 pivotally connected to the base, a motor for driving the spits (see at least abstract), and at least two rows of spits support on the base and cover when the cover is open (see at least fig. 3).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3749

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brazilian reference 8100906U, which shows substantially all of the claimed limitations. The reference shows a barbecue unit including, among other things, a base 02, four supports 01 (there are two pair, with each pair of supports attached/integral with one another), a cover 02 pivotally connected to the base, an electric motor for driving the spits (see at least abstract or translation), and at least two rows of spits support on the base and cover when the cover is open (see at least fig. 3).

a. Brazilian reference 8100906U does not specifically recite the use of gears in translating motion from the motor to the spits. Nevertheless, even if Brazilian reference 8100906U does not specifically recite gears, Official Notice is given that the use of gears with motors is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for efficient transfer of motion from the motor to the object to be driven. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate gears into the invention disclosed by Brazilian reference 8100906U,

so as to provide for efficient transfer of motion from the motor to the object to be driven.

b. Brazilian reference 8100906U does not specifically recite a stop mechanism. Nevertheless, a stop mechanism is clearly apparent as shown by at least fig. 2. Therefore, a stop mechanism is at least inherent as the figures depict the function recited in the claims. Further, Official Notice is given that the two piece stop mechanism recited in the claims is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for convenient positioning of the cover when the case is opened. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the stop mechanisms into the invention disclosed by Brazilian reference 8100906U, so as to provide for convenient positioning of the cover.

c. Brazilian reference 8100906U does not specifically recite that the shield is a single integral piece. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated an integral shield in the invention disclosed by Brazilian reference 8100906U, since it has been held that where constituent parts are combined so as to constitute a unitary whole, the unitary whole is deemed integral. *In re Larson*, 144 USPQ 347.

d. Brazilian reference 8100906U does not specifically recite the use of aluminum in the construction of the base and cover. Nevertheless, the particular

Art Unit: 3749

material used is simply a matter dependent on availability and cost. This material is well within the knowledge and ability of one of ordinary skill in the art. Further, applicant has failed to particularly point out any criticality that would require this material over other such materials also well known for use as a lightweight and heat resistant housing. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the claimed material into the invention disclosed by Brazilian reference 8100906U, so as to satisfy considerations of availability and cost.

Response to Arguments

6. Applicants' arguments with regard to the rejected claims, filed January 18, 2005, have been considered, but are deemed moot in view of the new grounds for rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3749

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272 4877. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

March 16, 2005


Alfred Basichas
Primary Examiner